BURNS PAIUTE INDIAN TRIBE ALLOTMENT

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

S. 1468

TO PROVIDE FOR THE DESIGNATION OF THE BURNS PAIUTE INDIAN TRIBE AS THE BENEFICIARY OF A PUBLIC DOMAIN ALLOTMENT

NOVEMBER 18, 1981

WASHINGTON, D.C.

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BURNS PAIUTE INDIAN TRIBE ALLOTMENT

NOVEMBER 18, 1981

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 9:55 a.m., in room 1318, Dirksen Senate Office Building, Senator Dennis DeConcini (acting chairman) presiding.

Present: Senators DeConcini and Melcher.

Staff present: Timothy Woodcock, staff director; and Peter Taylor, general counsel.

Senator DECONCINI. The hearing will come to order.

The matter before us is S. 1468: To provide for the designation of the Burns Paiute Indian Tribe as the beneficiary of a public domain allotment, and to provide that all future similarly situated lands in Harney County, Oreg., will be held in trust by the United States for the benefit of the Burns Paiute Indian Colony.

At this point, without objection, I will place a copy of S. 1468 in the hearing record.

[The bill follows:]

II

97TH CONGRESS
1ST SESSION

S. 1468

To provide for the designation of the Burns Paiute Indian Tribe as the beneficiary of a public domain allotment, and to provide that all future similarly situated lands in Harney County, Oregon, will be held in trust by the United States for the benefit of the Burns Paiute Indian Colony.

IN THE SENATE OF THE UNITED STATES

JULY 14 (legislative day, JULY 8), 1981

Mr. HATFIELD introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To provide for the designation of the Burns Paiute Indian Tribe as the beneficiary of a public domain allotment, and to provide that all future similarly situated lands in Harney County, Oregon, will be held in trust by the United States for the benefit of the Burns Paiute Indian Colony.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, pursuant to section 2 of the Act of November 24, 1942 (56 Stat. 1022; 25 U.S.C. 373b), the estate of Jesse Joseph James, Burns 144–N1116, consisting of a public domain allotment, Burns Paiute domain allotment numbered 144–111,

northwest quarter, section 32, township 23 south, range 32½ east, Willamette meridian, Harney County, Oregon, is hereby declared to be held in trust by the United States for the Burns Paiute Indian Colony of Oregon and part of the Burns Paiute Indian Reservation.

SEC. 2. Section 2 of the Act of November 24, 1942 (56 Stat. 1022; 25 U.S.C. 373b), is amended by inserting the following immediately before the period at the end thereof: ": *Provided further,* That interests in all Burns public domain allotments located in Harney County, Oregon, belonging to Indians who die intestate without heirs shall be held in trust by the United States for the Burns Paiute Indian Colony of Oregon and shall be part of the Burns Paiute Indian Reservation".

○

Senator DECONCINI. Mr. Kenneth Payton, Deputy Assistant Secretary for Indian Affairs, Department of the Interior is here.

Mr. Payton, please proceed.

STATEMENT OF KENNETH L. PAYTON, ACTING DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY LOU WHITE, OFFICE OF TRUST RESPONSIBILITIES, DEPARTMENT OF THE INTERIOR

Mr. PAYTON. Thank you, Mr. Chairman.

I have with me Mr. Lou White from our Office of Trust Responsibilities. He will be in a better position to answer any detailed questions on the bill.

I would ask that my prepared statement be submitted for the record.

Senator DECONCINI. Without objection, it will be inserted following your oral testimony.

Mr. PAYTON. The Department of the Interior has no objection to the enactment of S. 1468. We do suggest and recommend, however, one amendment which would, in effect, amend section 2 of the 1942 act, raising the amount of the value of the land from $2,000 as it is at present, to $50,000 which would eliminate the need for congressional action to accomplish this kind of transaction.

I would be happy to answer any questions you might have.

Thank you.

Senator DECONCINI. I have a few questions here regarding an amendment which I will submit to you. Just give me a moment.

S. 1468, as currently drafted, eliminates secretarial discretion, both in the instant case and in all future such cases in Harney County.

Does this present any problem for the Interior Department?

Mr. PAYTON. We do not feel that it does.

Senator DECONCINI. You have had a chance to analyze it?

Mr. PAYTON. Yes.

Senator DECONCINI. You mentioned in your statement, further, that the allotment has been valued at $9,600. You described that valuation as not being "formal."

Could you tell this committee for the record how that valuation was arrived at?

Mr. WHITE. There has been no formal appraisal made. It is an estimate.

Senator DECONCINI. How do you do it? Do you have an appraisal division that looks at it in-house?

Mr. WHITE. It has been reviewed by an appraiser, but he did not make a complete appraisal of the property. He may have used comparable sales and come up with an estimate.

Senator DECONCINI. It is more of an estimate than an appraisal?

Mr. WHITE. Yes; that is right.

Senator DECONCINI. How did the Department of the Interior arrive at the figure of $50,000 for its limit on secretarial discretion?

Mr. PAYTON. I was not personally involved in arriving at that figure, but I am certain it is based a good bit on the comparative values of land at this time as compared with 1942.

Senator DECONCINI. Do you think that is an adequate figure?

Mr. PAYTON. I think it is a good ballpark figure. We probably will have to get some experience before we find how really adequate it is.

Senator DECONCINI. Does the Department have any idea how many allotments exist in public domain lands and what that total acreage might be?

Mr. WHITE. Are you speaking of Oregon or throughout the United States?

Senator DECONCINI. Any place, but right here in Oregon to begin with.

Mr. WHITE. In Harney County, there is a total of about 11,000 acres for about 68 allotments.

Senator DECONCINI. How about nationwide? Is it a mammoth number?

Mr. WHITE. A couple of hundred thousand acres. It varies in various States. An example is Washington State which would average about 19,500 acres and California about 20,000 acres.

Senator DECONCINI. Are there any in Arizona?

Mr. WHITE. There are some in Arizona.

Senator DECONCINI. Would you submit that to us for the record?

Mr. WHITE. Certainly.

Senator DECONCINI. Without objection, that will be inserted in the record at this point.

[Subsequent to the hearing, the following information was supplied:]

There are approximately 83,500 acres of public domain land in the State of Arizona.

Senator DECONCINI. I want to thank you very much.

I have a question here, Mr. Payton, that I will submit to you regarding your amendment. We would like for you to give us those answers, if you will.

Mr. PAYTON. Certainly.

Senator DECONCINI. Without objection, those will be placed in the record at this point.

[Subsequent to the hearing, the following correspondence was received:]

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 28 1981

Honorable William S. Cohen
Chairman, Select Committee
on Indian Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This responds to your December 8 letter requesting our response to certain questions relating to S. 1468, the Burns Paiute bill. For purposes of clarity, your questions are repeated and the responses follow:

(1) It is not clear from the Department's testimony whether the amendment to raise the $2,000 limit on land that the Secretary can take into trust for an Indian tribe without an Act of Congress to $50,000 is intended to replace the present section 2 of S. 1468 or to be in addition to that section. Would you please advise the Committee on this?

Our suggested amendment is not intended to replace section 2 of S. 1468. Section 2 of S. 1468, with our recommendations will, (1) amend the Act of November 24, 1942 (56 Stat. 1022; 25 U.S.C. 373b) by deleting "$2,000" and inserting in lieu thereof "$50,000", and (2) provide an exception for Harney County as written in the bill.

(2) In addition to the dollar limitation on the Secretary's discretion, 25 U.S.C. 373b contains other restrictions. Among these is the requirement that the allotment must lie "within or adjacent to an Indian community." First, does the Interior Department have an opinion on, or is there a judicial construction of, the phrase "adjacent to"? Second, in the case of the James allotment, the land is located, according to the Department's testimony, 12 miles from the Burns Paiute Colony. Is the Department confident that this allotment lies "adjacent to" the Burns Paiute community within the meaning of 25 U.S.C. 373b? Third, as it now reads, S. 1468 would circumvent whatever limitation may be inherent in the phrase "adjacent to" by simply providing that all the allotments in Harney County, Oregon, that meet the conditions of the James allotment are to be taken into trust for the Burns Paiute Tribe. If "adjacent to" is a significant limitation, would it be wiser to leave section 2 in its present form and include the change in dollar limitation in a separate section?

Whenever the term "adjacent to" is used in statutes and regulations implemented by the Bureau of Indian Affairs, the ordinary dictionary definition is utilized, i.e., "adjacent things may or may not be in actual contact with each other" (Websters New World Dictionary).

It is arguable whether the land, being 12 miles from the Burns Paiute Colony, would be "within or adjacent to an Indian community" as restricted by the 1942 Act. Therefore, enactment of S. 1468 or similar legislation is necessary to resolve this issue.

As to the third part of this question, our recommendation is to amend section 2 of the bill to amend section 2 of the 1942 Act by increasing the $2,000 limitation to $50,000, which would lessen the need for Congressional consideration of the disposition of lands. This would not in any way affect the "adjacent to" limitation of the 1942 Act. We do not believe it is necessary to change the dollar limitation by adding a separate section.

(3) Senator Hatfield, in his statement accompanying the introduction of S. 1468, said "the utilization of 25 U.S.C. 373b is rare, having only been used once before . . . ." Would you please advise the Committee under what circumstances this provision was invoked and when?

The only case we have found, on limited research, involved the estate of We-Hun-Kah, deceased Wisconsin Winnebago Indian. At the time of her death, she was possessed by inheritance of the homestead allotment of her prior deceased husband, William Sam, Wisconsin Winnebago Indian allottee No. 148. We-Hun-Kah died in 1892. Her estate was probated in 1951. We-Hun-Kah died without heirs so the forty-acre tract, valued at $200 and adjacent to other Indian lands, escheated to the United States in trust for the Winnebago Indian Tribe of Wisconsin pursuant to 25 U.S.C. 373b and an order issued by the Acting Solicitor under delegation of authority from the Secretary of the Interior.

(4) The Department testified that there were approximately 200,000 acres of allotments in the public domain that may, in the course of time, fit the circumstances characterizing the James allotment. First, would you please tell the Committee in which States these allotments are located and the total acreage in each? Second, would you advise the Committee as to the Indian communities which are located "within or adjacent to" these allotments?

Public domain allotment acreage is shown below by agency jurisdiction. Many agencies are multi-tribal agencies (jurisdictionally); therefore, several different Indian communities may be "adjacent to" the allotments in that area or they may not be "adjacent" to any such community. Please note that the total acreage of allotments in all states is 1,234,337 acres.

	Total Acreage
Alaska (Includes townsite lots)	
Anchorage Agency	35,320
Bethel Agency	50,934
Fairbanks Agency	4,610

		Total Acreage
Alaska (Cont'd)		
Fairbanks Agency	5,294	
" "	74,831	
Nome Agency	101,924	
Southeast Alaska Agency	3,043	
TOTAL		275,956
Arizona		
East Yuma	480	
Navajo	81,350	
Pima Agency	160	
San Carlos	880	
Truxton Canyon	649	
TOTAL		83,519
California		
Western Nevada	580	
Central California	11,564	
Hoopa Agency	6,111	
Southern California	1,621	
TOTAL		19,876
Michigan		
Michigan Agency (Sault Ste. Marie)	280	
TOTAL		280
Minnesota		
Minnesota Agency (Cass Lake)	793	
TOTAL		793
Montana		
Fort Belknap (Turtle Mountain)	40,509	
Fort Peck (Turtle Mountain)	21,991	
No. Cheyenne (Turtle Mountain)	680	
TOTAL		63,180

		Total Acreage
Nevada		
Eastern Nevada Agency	1,709	
Western Nevada Agency	62,556	
TOTAL		64,265
New Mexico		
Laguna Pueblo	2,165	
Navajo	621,733	
Ramah Navajo	47,590	
TOTAL		671,488
Oregon		
Warm Springs (Burns Paiute)	11,014	
" " " "	5,324	
TOTAL		16,338
Utah		
Navajo	9,741	
TOTAL		9,741
Washington		
Colville Agency	2,675	
Spokane Agency	464	
Western Washington	6,307	
Yakima Agency	19,455	
TOTAL		28,901
GRAND TOTAL		1,234,337

If we can be of any further assistance, please do not hesitate to let us know.

Sincerely,

Roy H. Lampsel

Acting Assistant Secretary - Indian Affairs

[The prepared statement of Mr. Payton follows:]

PREPARED STATEMENT OF KENNETH L. PAYTON, ACTING DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the committee, I am pleased to have the opportunity to present the views of the Department of the Interior on S. 1468, a bill "To provide for the designation of the Burns Paiute Indian Tribe as the beneficiary of a public domain allotment, and to provide that all future similarly situated lands in Harney County, Oregon, will be held in trust by the United States for the benefit of the Burns Paiute Indian Colony."

We have no objection to the enactment of S. 1468, if amended as we have suggested in our report to your committee.

S. 1468 would authorize the Secretary of the Interior to hold in trust for the Burns Paiute Indian Colony of Oregon, as part of their reservation, a public domain allotment that is included in the estate of a Burns Paiute Indian who died in 1978 with no heirs. Section 2 of the bill would provide that interests in all Burns public domain allotments that are located in Harney County Oregon, and were owned by an Indian dying intestate without heirs shall be held in trust by the United States for the Burns Paiute Indian Colony of Oregon and shall be part of the Burns Paiute Indian Reservation.

Jesse J. James, a Burns Paiute Indian and owner of a 160-acre public domain allotment, died on January 12, 1978. His estate has been probated by the Portland Office of Hearings and Appeals, Department of the Interior, and in accordance with Oregon State law governing intestate succession, that office determined that Jesse J. James had no heirs. Descendants who were not eligible to inherit under Oregon State law petitioned to have the case reopened. Their petition was granted. However, the additional evidence which was presented only served to support the original findings. Pursuant to the Act of November 24, 1942 (56 Stat. 1022; 25 U.S.C. 373B), the administrative law judge issued a final order of escheat on May 30, 1980. The case was then referred to the Interior Board of Indian Appeals which determined that congressional action was necessary for the property to escheat to the United States in trust for the Burns Paiute Indian Colony. Section 2 of the 1942 act provides:

"That if the Secretary determines that the land involved lies within or adjacent to an Indian community and may be advantageously used for Indian purposes, the land or interest therein shall escheat to the United States to be held in trust for such needy Indians as the Secretary of the Interior may designate, where the value of the estate does not exceed $2,000, and in case of estates exceeding said sum, such estates shall be held in trust by the United States for such Indians as the Congress may hereafter designate, subject to all valid existing agricultural, surface, and mineral leases and the rights of any person thereunder."

Although no formal appraisal of the subject property exists, the Bureau of Indian Affairs has estimated the value of the property to be $9,600. It is located 12 miles from the existing Burns Paiute Colony tribal trust land, and is one of the many Burns Paiute public domain allotments, totalling 10,854 acres concentrated in an area just east of Burns, Oregon. We believe that transfer of this land to the tribe is in keeping with the congressional intent of the 1942 act.

We also support the intent of section 2 of S. 1468. However, we have recommended that the $2,000 limitation in section 2 of the 1942 act be increased to $50,000, thus removing the need for congressional consideration of the disposition of lands valued at less than that amount.

This concludes my prepared statement. I would be happy to answer any questions you or members of the committee may have.

Senator DECONCINI. We thank you very much.

We will stand in recess, subject to the call of the Chair.

[Whereupon, at 10:10 a.m., the hearing was adjourned.]

CORRESPONDENCE RECEIVED FOR THE RECORD

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Honorable William S. Cohen
Chairman, Committee on
Indian Affairs
United States Senate
Washington, D.C. 20510

NOV 16 1981

Dear Mr. Chairman:

This responds to your request for our views on S. 1468, a bill "To provide for the designation of the Burns Paiute Indian Tribe as the beneficiary of a public domain allotment, and to provide that all future similarly situated lands in Harney County, Oregon, will be held in trust by the United States for the benefit of the Burns Paiute Indian C ..ny."

We have no objection to the enactment of S. 1468, if amended as suggested herein.

S. 1468 would authorize the Secretary of the Interior to hold in trust for the Burns Paiute Indian Colony of Oregon, as part of their reservation, a public domain allotment that is included in the estate of a Burns Paiute Indian who died in 1978 with no heirs. Section 2 of the bill would provide that interests in all Burns public domain allotments that are located in Harney County, Oregon, and were owned by an Indian dying intestate without heirs shall be held in trust by the U.S. for the Burns Paiute Indian Colony of Oregon and shall be part of the Burns Paiute Indian Reservation.

Jesse J. James, a Burns Paiute Indian and owner of a 160-acre public domain allotment, died on January 12, 1978. His estate has been probated by the Portland Office of Hearings and Appeals, Department of the Interior, and in accordance with Oregon state law governing intestate succession that office determined that Jesse J. James had no heirs. Decendants who were not eligible to inherit under Oregon State law petitioned to have the case reopened. Their petition was granted. However, the additional evidence which was presented only served to support the original findings. Pursuant to the Act of November 24, 1942, (56 Stat. 1022; 25 U.S.C. 373b), the Administrative Law Judge issued a Final Order of Escheat on May 30, 1980. The case was then referred to the Interior Board of Indian Appeals which determined that congressional action was necessary for the property to escheat to the United States in trust for the Burns Paiute Indian Colony. Section 2 of the 1942 Act provides:

> "That if the Secretary determines that the land involved lies within or adjacent to an Indian community and may be advantageously used for Indian purposes, the land or interest therein shall escheat to the United States to be held in trust for such needy Indians as the Secretary of the Interior may designate, where the value of the estate does not exceed $2,000, and in case of estates exceeding said sum, such estates shall be held in trust

by the United States for such Indians as the Congress may hereafter designate, subject to all valid existing agricultural, surface, and mineral leases and the rights of any person thereunder."

Although no formal appraisal of the subject property exists, the Bureau of Indian Affairs has estimated the value of the property to be $9,600. It is located twelve miles from the existing Burns Paiute Colony Tribal trust land, and is one of the many Burns Paiute public domain allotments, totalling 10,854 acres, concentrated in an area just east of Burns, Oregon. We believe that transfer of this land to the tribe is in keeping with the Congressional intent of the 1942 Act.

We also support the intent of section 2 of S. 1468. We believe, however, that section 2 of the bill could be amended to solve permanently the problem created by the $2,000 limitation in the 1942 Act, by amending it to read as follows:

"Sec. 2. Section 2 of the Act of November 24, 1942 (56 Stat 1022; 25 U.S.C 373b) is amended by deleting, "$2,000" and inserting in lieu thereof "$50,000".

This amendment would increase the 1942 $2,000 limitation to $50,000, thus removing the need for Congressional consideration of the disposition of lands valued at less than that amount.

The Office of Management and Budget had advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Kenneth L. Smith

Assistant SECRETARY

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